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Mr. Greg Sanders  
U.S. Fish and Wildlife Service  
Ventura Field Office, 2493 Portola Road, Suite B  
Ventura, CA 93003

September 28, 2000

Dear Mr. Sanders,

This letter is to verify that the statement (enclosed) presented by Cynthia Cutler at the Santa Barbara scoping meeting will stand as our official submission of comment on the Notice of Intent to Prepare a Supplemental EIS on the Translocation Plan for Southern Sea Otters. Kindly incorporate this document into the administrative record as our public comment. Please note that we also endorse comments on this issue submitted by Friends of the Sea Otter.

Sincerely,



Toni G. Frohoff, Ph.D.  
Marine Mammal Consultant to The Humane Society of the United States and  
Earth Island Institute

Enclosure

cc: Naomi Rose, Ph.D. – HSUS  
John Grandy, Ph.D. – HSUS  
Mark Berman – EII  
Jim Curland – FOSO

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## USFWS Scoping Meeting on Preparation of Supplemental Environmental Impact Statement on Southern Sea Otter Translocation Program and Alternatives

August 15, 2000, Santa Barbara, California

Good afternoon. I am Cynthia Cutler of The Humane Society of the United States and I am here to provide input to the U.S. Fish and Wildlife Service (Service) on behalf of the more than 7.5 million members and constituents combined of The Humane Society of the United States and Earth Island Institute (HSUS/EII). We hope that these comments will be useful you in the reevaluation of the present translocation program and the potential modification of the program in a manner consistent with the recovery of this subspecies. These comments were provided by Dr. Toni Frohoff, a consultant to these organizations and a technical consultant to the Southern Sea Otter Recovery Team, and I make them on her behalf. We also refer you to our previous letters to the Service on this subject (September 3, 1998 and April 10, 2000) for detailed information on the issues we raise here.

The HSUS and Earth Island whole-heartedly support the third action alternative identified in the Service's Notice of Intent (published on July 27, 2000), which reads as follows: "Complete the Evaluation of Failure Criteria for the Translocation Program But Do Not Remove Sea Otters from San Nicolas Island or the Management Zone". We believe that this alternative is the only action that would comply with Public Law 99-625 (Public Law), the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA) in terms of protection and recovery of the population. We also note that this alternative is the only one to respond to the commercial, educational and recreational needs of those who rely on the southern sea otter population for non-consumptive purposes and who clearly comprise the majority of stakeholders affected by this decision.

## Failure Criteria

It is clear that the San Nicolas translocation must be declared a failure pursuant to two sections of the Service's regulations (50 CFR 17.84 (d) (8): (ii) and (v)) as well as other factors (please see our 1998 letter for details). The regulations specify one condition for failure as having fewer than 25 otters remaining in the translocation zone within three years from the initial transplant with the reasons for emigration or mortality not identified and/or remedied. A second condition is the health and well-being of the experimental population becoming threatened to the point that the colony's continued survival is unlikely. Certainly the survival of this colony, with fewer than 25 otters and minimal recruitment, is unlikely and both of these criteria for failure have been met.

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### **Relocation of Animals from Management Zone**

We agree with the Service's conclusion in its recent Biological Opinion that relocation of southern sea otters from the management zone will jeopardize the survival of the southern sea otter population. Given the current status of this population, relocation is contrary to the intent of the Public Law as well as of the ESA. Numerous significant events that bear on the translocation program have occurred in the last several years that need to be reflected in the Service's evaluation of otter relocation. These events include those points already mentioned in the Notice of Intent, all of which we believe are important for consideration. However, we note that the spring 2000 survey indicating an increase in sea otter numbers needs to be interpreted cautiously because the results of this single survey are anomalous and certainly do not provide sufficient evidence that the declining trend has reversed.

Relevant to reevaluation of the translocation program is the fact that recovery goals must include achieving a population that occupies a range adequate to minimizing the risk from a major oil spill, preferably one comparable to the subspecies' historic distribution. In addition to the continued threat of an oil spill, we strongly recommend duly considering the other serious hazards as noted in the most recent draft revised Recovery Plan (January, 2000). We also refer the Service to the serious threats to this population that we found to be downplayed or overlooked in the draft Plan. These include incidental take (harassment and injury/killing by recreational and commercial vessels), prey availability, contaminants, and illegal shootings.

### **Capture of Experimental Population**

It is clear that removing the otters from San Nicolas Island would be contrary to the goals of protection and recovery of this subspecies under the Public Law, the ESA and the MMPA. These animals could not be removed without jeopardizing the subspecies, because of the risk of mortality to the otters being translocated as well as because of the likely negative impacts to the parent population.

We understand that the Service's regulations (50 CFR 17.84) describe removal of sea otters from the island as a possible consequence of determination of translocation failure. However, the Public Law itself does not require removal of animals from the island. Clearly, the ESA pre-empts any USFWS regulation, especially when a jeopardy ruling has been established.

### **Other Factors**

Lastly, the positive effects of an expanded distribution of sea otters on the habitat of the California oceanic ecosystem should also be adequately considered by the Service in its Statement. Southern sea otters play a highly important and unique role in ecosystem health and diversity. Certain interest groups have inaccurately portrayed this role as solely destructive and the Service must provide adequate ecological information to correct this portrayal. In addition, The HSUS and Earth Island believe the Service must provide an adequate discussion of the likely historic structure of the California coastal ecosystem, before the large-scale removal of sea otters by fur traders. The current structure, which has allowed the 20<sup>th</sup> century growth of

commercial shellfish fisheries, is of relatively recent origin and is essentially an artifact of the fur trade.

We also remind the Service that the interests of select commercial interest groups negatively or positively impacted by this population's recovery should not dictate its management. Under the ESA, the Service's primary, and one might argue sole, responsibility is to recover the subspecies and prevent the subspecies' extinction. Any action other than that which supports the otters' range expansion would be contrary to this important mission.

We thank the Service for the opportunity to comment on this very important issue.